

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36387/36389

STATE OF IDAHO,	)	2010 Unpublished Opinion No. 371
	)	
Plaintiff-Respondent,	)	Filed: March 3, 2010
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
BENTON JOHN STEPHENS,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Fred M. Gibler, District Judge.

Judgment of conviction and concurrent unified sentences of ten years with three years determinate for two counts of felony driving under the influence of alcohol, affirmed; order denying Idaho Criminal Rule 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Stephen D. Thompson, Special Deputy Appellate Public Defender, Ketchum, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

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Before LANSING, Chief Judge, GUTIERREZ, Judge  
and MELANSON, Judge

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PER CURIAM

In this consolidated case, Benton John Stephens was convicted of two counts of felony driving under the influence of alcohol, Idaho Code §§ 18-8004, 18-8005(5). The district court imposed concurrent unified ten-year sentences with three-year determinate terms and retained jurisdiction. At the conclusion of the retained jurisdiction program, the court relinquished jurisdiction and ordered execution of Stephens' sentence. Stephens filed an Idaho Criminal Rule 35 motion, which the district court denied. Stephens appeals the court's decision to relinquish jurisdiction and the denial of his Rule 35 motion.

The decision as to whether to place a defendant on probation or, instead, to relinquish jurisdiction is committed to the discretion of the sentencing court. *State v. Hernandez*, 122 Idaho 227, 230, 832 P.2d 1162, 1165 (Ct. App. 1992); *State v. Lee*, 117 Idaho 203, 786 P.2d 594 (Ct. App. 1990); *State v. Toohill*, 103 Idaho 565, 567, 650 P.2d 707, 709 (Ct. App. 1982). Therefore, a decision to relinquish jurisdiction will not be disturbed on appeal except for an abuse of discretion. *State v. Chapman*, 120 Idaho 466, 816 P.2d 1023 (Ct. App. 1991). The record in this case shows that the district court properly considered the information before it and determined that probation was not appropriate. We hold that the district court did not abuse its discretion, and we therefore affirm the order relinquishing jurisdiction.

A Rule 35 motion is a request for leniency which is addressed to the sound discretion of the sentencing court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 159 P.3d 838 (2007). Our focus on review is upon the nature of the offense and the character of the offender. *State v. Reinke*, 103 Idaho 771, 772, 653 P.2d 1183, 1184 (Ct. App. 1982). Where a sentence is not illegal, the appellant must show that it is unreasonably harsh in light of the primary objective of protecting society and the related goals of deterrence, rehabilitation and retribution. *State v. Broadhead*, 120 Idaho 141, 145, 814 P.2d 401, 405 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385, 825 P.2d 482 (1992); *Toohill*, 103 Idaho at 568, 650 P.2d at 710.

Upon reviewing the record that was before the district court at the time of the denial of Stephens' Rule 35 motion, we find no abuse of discretion. Therefore, the district court's decision to relinquish jurisdiction and the order denying Stephens' Rule 35 motion are affirmed.